

Barry R. McBee, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
John M. Baker, *Commissioner*
Dan Pearson, *Executive Director*

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TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

August 14, 1997

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Opinion Committee

The Honorable Dan Morales
Attorney General of Texas
Price Daniel Sr. Building
209 West 14th Street
Austin, Texas 78701

RQ-975

Dear General Morales:


During the Legislative session just ended, SB 1591 was passed to authorize the Texas Natural Resource Conservation Commission to provide regulatory flexibility so that environmental standards could be met or exceeded through alternative methods or techniques. The pertinent provisions in Texas Water Code §5.123 provide a mechanism through which an applicant, pursuant to a Commission order, may use an alternative method or standard for complying with a requirement of a statute or Commission rule regarding the control or abatement of pollution. The alternative method or standard would have to be at least as protective of the environment and public health as the original method or standard prescribed by statute or rule, but could not be inconsistent with federal law.

So that we may efficiently implement these provisions, your opinion on one aspect of the enactment is requested. After passage, it was suggested that an attempt by the Legislature to delegate to the Commission the power to suspend the application of statutes would be unconstitutional, in violation of Texas Constitution art. 1, §28 which provides that: "No power of suspending laws in this State shall be exercised except by the Legislature". A possible violation of the separation of powers doctrine, Texas Constitution art. 2, §1, was also suggested based on an alleged lack of clear standards for the suspension discretion to be exercised by the Commission.

Consequently, your official opinion on the following questions is respectfully requested:

1. May the Legislature authorize the Commission to exempt entities from statutory pollution control and abatement provisions without offending either Texas Constitution art. 1, §28 or art. 2, §1?
2. If such an authorization is constitutional, could the exemption be granted on a case by case basis, as contemplated by SB 1591, or would it have to be "general" suspension? See MacDonald v. Denton, 132 S.W. 823 (Tex. Civ. App. 1910).

Sincerely,


Barry R. McBee
Chairman

cc: Senator Tom Haywood
Representative Robert Talton